Supreme Court, U. S.
FILED
MAY 29 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1636

WILLIAM A. GOICHMAN, Petitioner

v.

THE DISCIPLINARY BOARD OF THE

SUPREME COURT OF PENNSYLVANIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR RESPONDENT IN OPPOSITION

ALLEN B. ZERFOSS, Esquire
Chief Disciplinary Counsel
SAMUEL D. MILLER, Esquire
JOHN W. HERRON, Esquire
Attorneys for Respondent
809 Widener Building
Philadelphia, PA 19107

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OPINIONS BELOW

The lower court opinions in the instant matter were appended to the Petition and are not appended hereto. Neither of the opinions below is reported.

JURISDICTION

Jurisdictional requisites for the instant matter are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether this Court should grant certiorari based upon Petitioner's claim that he was denied his right to a speedy trial as guaranteed by the Sixth and Fourteenth Amendments in a non-criminal attorney disciplinary proceeding in a state court, by reason of the trial court's failure to render a decision for 3 years 9-1/2 months where Petitioner's right to practice law was unaffected by reason of the pendency of this matter although he was

suspended from the practice of law based upon an unrelated conviction for tax evasion.

2. Whether this Court should grant certiorari based upon Petitioner's claim that the weight of the evidence in two charges was insufficient where the trial court, in detailed findings of fact, sustained all seven charges of gross professional misconduct and where this same claim was raised on appeal to the Supreme Court of Pennsylvania, which affirmed Petitioner's two year suspension.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

COUNTER-STATEMENT OF THE CASE

As a result of an investigation conducted by the Special Counsel of the Special Judicial Investigation of the Philadelphia Court of Common Pleas, a Petition for Imposition of Discipline was filed against Petitioner by the Special Counsel at February Term, 1973, No. D-29, in the Court of Common Pleas of Philadelphia County. Said Petition lodged seven (7) charges of professional misconduct against Petitioner, arising out of five separate cases. The charges involved solicitation, filing false retainer agreements, filing fraudulent

medical claims and prosecuting a claim without the authorization of a client. A hearing on the Petition for Discipline was held on September 23, 24 and 25, 1974. The Special Counsel presented his case in the form of witnesses and documents and rested. Petitioner presented no evidence.

The three judge Special Disciplinary Court which heard the case against Petitioner took the case under advisement. On June 26, 1978, the Special Disciplinary Court issued its decision, finding that Petitioner was "guilty of each of the... counts" contained in the Petition for the Imposition of Discipline. The trial court found affirmative conduct on Petitioner's part which constituted the various ethical violations charged and found Petitioner's conduct to be "utterly reprehensible." The court ordered a suspension from the practice of law for a period of two years (see

Petitioner's Appendix B).

On June 27, 1978, Petitioner filed Notice of Appeal of the aforesaid decision in the Supreme Court of Pennsylvania. Thereafter, under cover of letter dated November 2, 1978, Petitioner, through counsel, filed the Application for Relief which appears as Appendix C to Petitioner's Petition for Writ. By letter dated December 8, 1978, the Supreme Court of Pennsylvania notified Petitioner's counsel that decision on the aforesaid Application for Relief was reserved. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix A.

Both Petitioner, through counsel, and the Respondent named herein submitted letter briefs to the Supreme Court of Pennsylvania. Petitioner's letter brief was dated January 15, 1979. A true and correct copy of said letter is attached hereto, made a part hereof

and marked Appendix B. Respondent's answering letter brief was dated January 30, 1979. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix C. Petitioner's reply was a letter dated February 8, 1979. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix D. Respondent's counter-reply was a letter dated February 13, 1979. A true and correct copy of said letter is attached hereto, made a part hereof and marked Appendix E. Each of the foregoing letter briefs dealt with the issue of whether Petitioner suffered any prejudice by virtue of the delay between hearing and decision and whether there was sufficient evidence to affirm the decision of the Special Disciplinary Court.

It should be noted that although representatives of Respondent submitted briefs

below in opposition to Petitioner's position below, at no point in time was Respondent a party to or involved in Petitioner's case.

By Order dated February 28, 1979, the Supreme Court of Pennsylvania unanimously affirmed and approved the findings of the Special Disciplinary Court and ordered Petitioner suspended for two (2) years, retroactive to February 9, 1978.[1] One justice dissented in favor of commencing the two year suspension on the date of the

[1]By Order dated October 14, 1977, Petitioner was suspended from the practice of law in Pennsylvania, and subsequently in California also, by reason of his conviction of two (2) counts of tax evasion in violation of 26 U.S.C §7201. While Petitioner subsequently has been reinstated to the practice of law in California, he remains suspended in Pennsylvania.

Order. Petitioner's Petition for Writ of Certiorari then followed and was docketed on April 27, 1979.

ARGUMENT

I. THIS COURT SHOULD NOT GRANT CERTIORARI BASED UPON PETITIONER'S CLAIM THAT HE WAS DENIED HIS RIGHT TO A SPEEDY TRIAL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS IN A NON-CRIMINAL ATTORNEY DISCIPLINARY PROCEEDING IN A STATE COURT, BY REASON OF THE TRIAL COURT'S FAILURE TO RENDER A DECISION FOR 3 YEARS 9-1/2 MONTHS, WHERE PETITIONER'S RIGHT TO PRACTICE LAW WAS UNAFFECTED BY REASON OF THE PENDENCY OF THIS MATTER, ALTHOUGH HE WAS SUSPENDED FROM THE PRACTICE OF LAW BASED UPON AN UNRELATED CONVICTION FOR TAX EVASION.

Petitioner Has Failed to Raise a Substantial Federal Question

Where there is no real and substantial federal question, or where the matter is devoid of merit and frivolous this Court will not grant review and the mere averment of a federal question without color of ground there-

fore is insufficient. New Orleans v. New Orleans Water Works Co., 142 U.S. 79 (1891).

Petitioner's claim of a right to certiorari in the instant matter because of an alleged denial of right to speedy trial is devoid of merit and frivolous. The words of the Sixth Amendment make that amendment applicable only to criminal prosecutions. In distinction, a disciplinary proceeding is not a criminal prosecution. The universally accepted view of the nature of disciplinary proceedings has been expressed well by the court of appeals in In re Echeles, 430 F.2d 347, 349-50 (7th Cir. 1970), wherein the court stated,

> "Preliminarily, it would be well to note that disbarment and suspension proceedings are neither criminal nor civil in nature but are special proceedings, sui generis, and result from the in-

herent power of the courts over their officers. Such proceedings are not law suits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the Respondent. they are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministrations of persons unfit to practice law. Ex parte Wall, 107 U.S. 265, 2 S.Ct. 569, 27 L.Ed. 552 (1888)."

Disciplinary proceedings have been styled "quasi-criminal", In re Ruffalo, 390 U.S. 543 (1968); and attorneys in disciplinary proceedings have been accorded certain procedural and substantive rights such as the right to

notice of the charges and a hearing, id.; and the right to assert the privilege against self incrimination. Spevack v. Klein, 385 U.S. 511 (1967).

The right of an attorney in a disciplinary proceeding to a speedy trial as guaranteed by the Sixth Amendment has been the subject of request for certiorari in this Court previously and the Court has declined to review the question. Bar Association of Baltimore v. Posner, 275 Md. 250, 339 A.2d 657 (1975), cert. denied, 423 U.S. 106 (1975); In re Weinstein, 254 Ore. 392, 459 P.2d 548 (1969), cert. denied, 398 U.S. 903 (1970). It is clear that an attorney facing disciplinary charges is entitled to due process. However, as stated by the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, Problems and Recommendations in Disciplinary Enforcement, Final Draft/June 1970, p.

124:[2]

> "Due process is satisfied if the attorney is advised of the charges, witnesses against him are produced and subjected to cross-examination and he is given the right to adduce testimony and to testify in his own behalf."

In the instant case it is clear from Petitioner's Statement of the Case that the foregoing due process requirements were met in the courts below. It was only because of a decision by Petitioner that no testimony was adduced on his behalf during the hearing before the Special Disciplinary Court.

The position that the right to a speedy trial under the Sixth Amendment is applicable only to criminal cases is buttressed by this

[2]The committee was chaired by Tom C. Clark, former justice of this Court.

Court's decision that another right under the Sixth Amendment, the right to trial by jury, is limited, and was intended to be limited by the framers of the Constitution, to persons subject to criminal indictment or presentment under the Fifth Amendment Ex parte Milligan, 71 U.S. 2 (1886). If the right to trial by jury under the Sixth Amendment is limited to criminal cases, then it follows logically that the right to a speedy trial is also so limited.

Petitioner Failed to Raise a Federal Question in the Courts Below

The jurisdiction of this Court to review proceedings in state courts is not that of a general reviewing court. Rather the review is limited to specific instances of denial of federal rights and unless a case involves a federal question the judgment or decree of the state court is not reviewable. Hunter v. McHugh, 320 U.S. 222 (1943). More-

over, even if the case involves a federal question it must appear that the lower court had occasion to pass on the federal question alleged to be involved, Herb v. Pitcairn, 324 U.S. 117 (1945), supp. op. 325 U.S. 77 (1945), reh. denied, 325 U.S. 893 (1945). It is not sufficient that a federal question might have been raised or decided in the court below. It must appear directly or by necessary intendment that the question was brought to the notice of the court and that the court decided the question. Crowell v. Randell, 35 U.S. 368 (1836). There must have been averments so distinct and positive as to place it beyond question that the party intended to assert a federal right. Kipley v. Illinois, 170 U.S. 182 (1898).

In the instant matter Petitioner has not shown that a federal question was raised in the court below. To the contrary, appendices B through D to the within brief show

that Petitioner did not raise a federal question below. Petitioner did not allege an infringement of a constitutional right or a violation of any amendment to the Constitution or even that a federal question existed. In addition, there is no indication whatever that the Supreme Court of Pennsylvania, in issuing its Order of February 28, 1979, decided any federal question.

The Within Matter is One Involving Only Familiar Principles of State Law

The decision below rested on independent state grounds, which are adequate to support the judgment rendered by the Supreme Court of Pennsylvania and which are based on familiar legal principles. The briefs below of Petitioner and Respondent cited only cases from various states in support of their arguments. Those briefs demonstrate that all of Petitioner's claims

regarding post trial delay were susceptible of resolution on the basis of familiar legal principles involving state law pertaining to delay in disciplinary proceedings. See especially, Appendix C, infra. Under such circumstances this Court should not grant certiorari. Herb v. Pitcairn, supra.

Petitioner's Cases are Distinguishable On the Facts and On the Law

The cases cited by Petitioner in support of his contention that he was denied his rights under the Sixth Amendment are distinguishable from the instant case on both the facts and the law. The cases of Thompson v. Louisville, 362 U.S. 199 (1960); Barker v. Wingo, 407 U.S. 514 (1972); Klopfer v. North Carolina, 386 U.S. 213 (1967); Pollard v. United States, 352 U.S. 354 (1957); Strunk v. United States, 412 U.S. 434 (1973); Johnson v. Florida, 391 U.S. 596 (1968); Harris v. United States, 404 U.S. 1232 (1971); United States v. Marion,

404 U.S. 307 (1971); Smoker v. Russell, 218 F.Supp. 899 (M.D.Pa. 1963); and U.S. ex rel. Giovengo v. Maroney, 194 F.Supp. 154 (W.D.Pa. 1961) are all criminal cases, which come within the scope of the Sixth Amendment, while the within matter is not a criminal case and not within the scope of the Sixth Amendment. Moreover the Smoker and Giovengo cases, supra, involved delays occurring after the entry of guilty pleas by the defendants and, in the Smoker case, after repeated requests by defendant for final disposition of his case. Such cases clearly are distinguishable from the instant matter. In addition, the Pollard case, supra, clearly noted that the question of whether there has been a deprivation of rights depends on the circumstances of each case. 352 U.S. at 361. In assessing the circumstances of a case, the Court of Appeals has held that where a delay occurred after a bench trial and before the decision

was announced by the District Court and the delay did not prejudice the appeal of the defendant who was at large on bail during the period of delay then the defendant was not denied a speedy trial. United States v. Beebe, 431 F.2d 428 (9th Cir. 1970). The facts of the Beebe case clearly approximate the facts of the instant case and if the Sixth Amendment is to be applicable to a disciplinary case Respondent respectfully submits that the Beebe case should control.

Petitioner's reliance on the case of Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154 (1971), is misplaced. Said decision was one involving admission to the bar. Additionally, while Petitioner does not disclose the fact, the quotation at p. 10 of Petitioner's brief, taken from the Law Students case, actually appears in dicta in Mr. Justice Black's dissent in that case: 401 U.S. at 174.

Petitioner Has Failed to Comply With Rules of Court

Rule 21(4) of this Court provides that all parties to the proceeding in the court whose judgment is sought to be reviewed are considered parties herein unless the Petitioner takes certain enumerated steps. In the instant case, the counsel below was a special counsel appointed by the Court of Common Pleas of Philadelphia. Except for the letter briefs which Respondent submitted below at the request of the Supreme Court of Pennsylvania Respondent was not a party below. However, Petitioner does not make the special prosecutor a party and to Respondent's best information has not complied with Rule 21(4).

II. THIS COURT SHOULD NOT GRANT CERTIORARI BASED UPON PETITIONER'S CLAIM THAT THE WEIGHT OF THE EVIDENCE IN TWO CHARGES WAS INSUFFICIENT WHERE THE TRIAL COURT, IN DETAILED FINDINGS OF FACT, SUSTAINED ALL SEVEN CHARGES OF GROSS PROFESSIONAL MISCONDUCT AND WHERE THIS SAME CLAIM WAS RAISED ON APPEAL TO THE SUPREME COURT OF PENNSYLVANIA, WHICH AFFIRMED PETITIONER'S TWO YEAR SUSPENSION.

Petitioner claims that there was insufficient evidence with respect to the "Halcsin" and "Manigo" matters to support the findings of the Special Disciplinary Court that he was guilty of unprofessional conduct. In raising his challenge to the sufficiency of the evidence, Petitioner attacks the Special Disciplinary Court findings in only two of the seven charges and raises no specific objections to the other five charges.

In the five unchallenged charges of professional misconduct, the Special Disciplinary Court found that Respondent solicited the Arnold and Penn cases (Charges I and VII); filed fraudulent medical claims for Roger and Doris Lindsey and also on behalf of Penn (Charges IV, V and VII); filed a false retainer agreement in the Arnold case (Charge VI); and prosecuted an unauthorized claim for Penn (Charge VII).

These charges alone are grave and the evidence was strong. For example, with respect to the solicitation of the Arnold case in Charge I, Arnold's testimony was substantially corroborated by his mother. Arnold subsequently observed the person who solicited the case in Petitioner's office. In Charges IV and V, both Roger Lindsey and his mother, Doris, testified that they suffered only minor injuries and had sought no medical treat-

ment prior to their meeting with Petitioner. Both Lindseys testified that Petitioner directed them to testify falsely in depositions and in answers to interrogatories that they were treated by a physician 17 times instead of the two medical visits they actually made. Finally, in Charge VII Petitioner was found to have filed a personal injury claim for Barbara Penn, an uninjured passenger in an automobile accident, without her knowledge or authorization. Petitioner was found to have falsely represented to the insurance carrier that Mrs. Penn was treated by two named physicians, who in fact had neither treated Mrs. Penn nor communicated with Petitioner. The Special Disciplinary Court found (Petition, p. 9a-10a) that Petitioner:

> "[F]abricated this entire medical claim including representations concerning Mrs. Penn's injuries. [Petitioner] then negotiated a settlement of Barbara Penn's case for $350 based on his fraudulent representations.
>
> "After concluding the settlement, [Petitioner] went to Mrs. Penn's house and prevailed upon her to sign the release. He then received the settlement check and again attempted to get Barbara Penn to go along with the fraudulent scheme by endorsing it. She refused, and reported the scheme to the responsible party which resulted in a stop payment order being placed on the check. [Petitioner] thereafter presented the check for payment with the forged endorsement of Barbara Penn. We infer from the evidence that [Petitioner] forged the endorsement himself or was directly responsible

for it."

These five charges alone to which Petitioner has not filed exceptions, more than adequately support the order imposing suspension. Petitioner's request for discretionary review by this Court of only two of the seven proven charges of misconduct is unnecessary and should be denied.

The record below is replete with evidence to support Petitioner's suspension. This Court has stated that:

> "While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process..., calls for our examination of evidence to determine for ourselves whether a federal constitutional right has been denied..., we accord in that examination great respect to the conclusions of the state judiciary...that respect

> leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.'"

Akins v. Texas, 325 U.S. 398, 401-402 (1945). Thus, the inquiry is whether Petitioner has suffered fundamental unfairness as a result of the trial court's conclusions. It is clear that Petitioner was accorded all his fundamental due process rights. He had notice of charges against him and an opportunity to be heard on those charges. In addition the unchallenged findings of gross professional misconduct in five charges provide a sufficient record to support the suspension imposed on Petitioner.

CONCLUSION

Based upon the foregoing points of argument, Respondent asserts that the questions proffered for the consideration of this Honorable Court are totally and completely without merit, and that Petitioner has presented no argument or compelling reason which would justify consideration of those questions by your Honorable Court. Respondent therefore prays that your Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Allen B. Zerfoss, Esquire

Chief Disciplinary Counsel

Samuel D. Miller

Samuel D. Miller, III, Esquire

Assistant Disciplinary Counsel

John W. Herron

John W. Herron, Esquire

Assistant Disciplinary Counsel-in-Charge

District I Office

Counsel for Respondent

APPENDIX "A"

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

December 8, 1978

F. Emmett Fitzpatrick, Esquire
3131 Centre Square West
Philadelphia, PA 19102

In the Matter of: William A. Goichman
Appeal of: William A. Goichman
No. 275 January Term, 1978

Dear Mr. Fitzpatrick:

This is to advise you that the following Order has been endorsed on your Application for Relief, filed in the above-captioned matter:

"11/28/78

Decision reserved. Oral argument and written brief to be filed dur- April, 1979, session on merits and delay in disposition issue.

By the Court."

Accordingly, brief for the appellant is due for filing on January 22, 1979.

Your attention is directed to Pa. R.A.P. 2111(b) which provides that copies of the lower court opinions must be appended to the appellant's brief. This rule will be strictly enforced, and no briefs will be accepted for filing which do not comply with this requirement.

Very truly yours,

Sally Mr[illegible]os
Prothonotary

By_____
Catherine E. Lyden
Deputy Prothonotary

CEL:bl

cc: William P. Stewart, Esquire
Allen B. Zerfoss, Esquire
John W. Herron, Esquire

Mr. Stewart and Mr. Zerfoss:

The Court would appreciate your appearing at time of oral argument to present your views in this matter.

APPENDIX "B"

LAW OFFICES
3131 Centre Square West
Philadelphia PA 19102
215-568-2700

January 15, 1979

Honorable Michael J. Eagen
Supreme Court of Pennsylvania
470 City Hall
Philadelphia, PA 19107

Re: In the Matter of William A. Goichman
Appeal--No. 275 January Term 1978

Dear Chief Justice Eagen:

In consultation with Mr. Justice Nix about a rather sensitive matter presently pending before the Court, I have taken the liberty of writing this letter to you. For several reasons suggested herein, I am asking the Court to handle this matter in a rather different and unusual fashion.

This matter is presently pending before your Court as a result of an Application for Relief which I filed in November 2, 1978 on behalf of Mr. Goichman, my classmate in law school. At the suggestion of the Court, I served as my opponent both William P. Stewart, who was the Special Prosecutor appointed by the Common Pleas Panel here in Philadelphia to prosecute these matters, and the Disciplinary Counsel, who, of course, had come into existence since this matter was handled. Both Mr. Stewart and John W. Herron, on behalf of the Disciplinary Counsel, have respectfully declined to participate. I am faced with a briefing date of January 22 and, while I am quite willing to file a brief and to argue this matter on the April list, to do so will apparently require that a Special Prosecutor be appointed and familiarize himself with all of the details of this case just to bring argument before

your Court. Attached are letters from Mr. Herron and Mr. Stewart which have been directed to the Court.

Mr. Goichman was a target of the Special Judicial Investigation conducted by the Court of Common Pleas in October of 1971. On February 9, 1973 a Petition for the Imposition of Discipline against Mr. Goichman was filed charging him with seven specific counts of solicitation, filing of false retainer agreements, fraudulent medical claims and prosecuting an unauthorized claim. This petition was made public and carried in the press here in Philadelphia, although this policy was subsequently changed. Nonetheless, the public was made aware of the fact that charges were pending against Mr. Goichman.

In September of 1974, a hearing was held before the Honorable Charles Klein, the Honorable Gregory Lagakos and the

Honorable James L. Stern. Testimony was concluded in the Fall of 1974, but a decision was not announced until June 26, 1978, some 44 months later, and the recommendation was that Mr. Goichman be suspended for two years beginning June of 1978.

In the meantime, Mr. Goichman was convicted of income tax evasion in June of 1975 and a fine imposed. As a result of this, the Supreme Court suspended Mr. Goichman for two years, beginning February 9, 1976. When he applied for reinstatement on June 26, 1978, he was advised for the first time of the finding by the original three-Judge panel.

Mr. Goichman very strenuously disagrees with the finding of the three-Judge panel based upon the evidence before it. He was advised by different counsel throughout the pendency of these proceedings that evidence was not nearly enough to result in a finding against him. Moreover, he fully ex-

pected that whatever the finding might be, the penalty would take effect and even be concluded far before June 26 of 1978.

Since February 9, 1976, Mr. Goichman has not been permitted to practice law in Pennsylvania. He has relocated to the State of California and has applied for admission to that Bar. The pendency of these unfinished proceedings is delaying action upon that admission. On his behalf, I sought unusual relief from your Court with a Petition and Memorandum of Law. I would be happy to proceed with the briefing schedule and argument, except for the fact that it occurs to me that to do so might be a cumbersome way of handling this problem.

The legal issues regarding delay are fairly simple. There has been absolutely no attempt to explain in any fashion the delay of the Hearing Panel nor indeed does

there now appear that there is even an attorney who is prepared to do so. Whatever the explanation is to be, it must be regarded as intolerable, particularly in light of the fact that the penalty of two years suspension did not begin to run until after the intolerable delay, thus completely amplifying the degree of injustice. Had this matter been decided promptly, it would have been well behind Mr. Goichman by June of 1978.

Your Court has recognized that a disbarment proceeding is every bit as serious as a criminal trial and often far more so. Schlesinger Case, 404 Pa. 584, 172 A2d 835 (1961). The need for proceeding promptly with charges in criminal matters has been well recognized by your Court and I will not attempt to repeat the citations here. The charges themselves make findings of guilt about the submission of contingent fee agreements, a requirement honored more in its

breach than in its observance and one which has since been rescinded and of inflated medical bills. The record indicates quite clearly a serious lack of any evidence of the defendant's knowledge about these bills and complete reliance upon the testimony of certain clients who obviously did not understand the intracacies of legal representation. At any rate, they do not rise to the level of violations which require an attorney to suffer to a greater extent than Mr. Goichman already has.

In light of the fact that the adversary system apparently has not materialized in this case, and the delays that have already been occasioned through no fault of Mr. Goichman, I am requesting the Court to reconsider its order of November 28, 1978 and to decide this matter without further benefit of oral argument or written brief, except insofar as the Court feels that it might be aided by

further legal research on my behalf. I am further asking the Court to consider this a matter for immediate disposition in light of the time that has already passed and the effect that the delay of the Hearing Panel has already had upon the professional career of Mr. Goichman.

I note that the Committee of the Disciplinary Board to which Mr. Goichman appealed for reinstatement has not yet handed down its decision on reinstatement and I rather feel that they are waiting for some disposition of this present matter.

I have taken the liberty of enclosing, in addition to the letters already noted from Mr. Herron and Mr. Stewart, a copy of my Application for Relief which contains not only a Memorandum of Law, but also the Opinion of the three-Judge panel. I really see nothing that can enhance the public reputation of the legal profession by causing this matter to be argued upon the regular list. Nor do I see the Court in its mercy allowing further periods of suspension to be effective as to Mr. Goichman.

Because of the problems noted above, I have not attempted service of this letter upon either Mr. Stewart or Mr. Herron and will not do so until I receive contrary instructions from the Court.

Sincerely,

F. Emmett Fitzpatrick

FEF/bd

Enclosures

cc: Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Rolf Larsen
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Louis L. Manderino

APPENDIX "C"

THE DISCIPLINARY BOARD

OF THE

SUPREME COURT OF PENNSYLVANIA

DISTRICT I OFFICE

809 Widener Building

Philadelphia, Pennsylvania 19107

(215) 563-2650

January 30, 1979

Honorable Michael J. Eagen

Chief Justice

Supreme Court of Pennsylvania

464 City Hall

Philadelphia, PA 19107

RE: In re William A. Goichman,

No. 275, January Term, 1978

Dear Chief Justice Eagen:

Pursuant to the request previously made by your Honorable Court that this office present its position in the above captioned case

(Order of November 28, 1978), we respond as follows to the letter dated January 15, 1979, from F. Emmett Fitzpatrick, Esquire, to you.

The Goichman case is before your Honorable Court not as a result of Mr. Fitzpatrick's Application for Relief filed November 2, 1978, but as a result of an appeal filed by Mr. Goichman on June 27, 1978, from the decision of the Special Disciplinary Court of the Court of Common Pleas of Philadelphia County ("the Court"). That decision, dated June 26, 1978, found Mr. Goichman to have committed all disciplinary violations with which he was charged by the Special Prosecutor of the Special Judicial Investigation of the Philadelphia Courts ("the Investigation").

A Petition for Imposition of Discipline was filed against Mr. Goichman by the Special Prosecutor at February Term, 1973, No. D-29. The Petition lodged seven charges

against Mr. Goichman, arising out of five separate cases. The charges involved solicitation, filing false retainer agreements, filing fraudulent medical claims and prosecuting a claim without the authorization of a client. After hearing, the Court determined that Mr. Goichman was "guilty of each of the...counts" in the Petition. The Court found Mr. Goichman's conduct to be "utterly reprehensible" and determined that a suspension from the practice of law for a period of two years was the discipline appropriate to the violations found.

Turning to the merits of the case, the discipline recommended shows a clear recognition by the Court of the seriousness of the charges involved, which go to the very heart of the legal system. Mr. Goichman's case was not one which involved simply a failure to file contingent fee agreements. Rather the case involves per-

versions of the legal process. The filing of false retainer agreements, the submission of fraudulent medical bills and the prosecution of an unauthorized claim all indicate a lack of recognition of a lawyer of his obligations as an officer of the court. See, In re Berlant, 458 Pa. 439, 328 A.2d 471 (1974). Additionally, solicitation was in 1971, and continues to be, a violation of the Code of Professional Responsibility. Ohralik v. State Bar of Ohio, ___ U.S. ___, 98 S. Ct. 1912, 56 L.Ed. 2d 444 (1978); In re Berlant, supra.

The fact, as set forth at p. 3 of Mr. Fitzpatrick's letter, that Mr. Goichman disagrees with the findings of the Court and that Mr. Goichman may have been advised by sone unnamed prior counsel that the evidence "was not nearly enough to result in a finding against

him" does not change the findings of the Court or make those findings wrong. To the contrary, in each of the charges a panel consisting of three eminent judges of the Court of Common Pleas found affirmative conduct on Mr. Goichman's part which constituted the various ethical violations charged. That same eminent panel, by its holding, found the evidence submitted by Mr. Goichman to be less credible than the evidence presented by the Special Prosecutor. As your Honorable Court has said, "If under the circumstances it is reasonable to infer that the action was taken at the party's direction or with his approval, the fact finder may draw such inferences to support a finding of guilt." In re Berlant, supra, 328 A.2d at 474. That quotation clearly and certainly applies to the instant case.

Turning to the contentions regarding

delay in the rendering of an opinion below, several points must be considered.

First, from approximately July 1973 Mr. Goichman has practiced law in California. He is not, as Mr. Fitzpatrick suggests, presently seeking admission to the bar in California. He was admitted there in April 1972. Mr. Goichman presently is suspended there as a result of his convictions in the United States District Court for the Eastern District of Pennsylvania of two counts of income tax evasion. That suspension was effective in California in August 1976. Thus the pendency of the instant proceedings is not delaying action on his admission to the bar in California. Neither is the pendency of the instant case delaying Mr. Goichman's reinstatement in California since no such petition has been filed there. Similarly it is not true that a Hearing Committee of the Disciplinary Board is with-

holding decision on Mr. Goichman's Petition for Reinstatement to the Pennsylvania Bar. To the contrary, on or about January 25, 1979, the Hearing Committee filed its Report with the Disciplinary Board. Mr. Goichman has been sent a copy of that decision as has his attorney in that proceeding.

Second, the general rule regarding delay has been that in order for a disciplinary respondent to successfu ly assert a defense involving delay he must show that there was an unreasonable delay and that he was prejudiced thereby. One of the few disciplinary cases in Pennsylvania to face such a situation was Wilhelm's Case, 269 Pa. 416, 112 A. 560 (1921), in which a five year delay occurred between the issuance of a rule to show cause why Wilhelm should not be disbarred and the date of hearing. Your Honorable Court upheld the disciplinary action taken by

the lower court noting that the delay inured to Wilhelm's benefit and that he had demonstrated no prejudice from the delay. Notwithstanding the age of the Wilhelm case, its principles are in accord with the weight of modern authority. See, Ann Arundel County Bar Association, Inc. v. Collins, 272 Md. 578, 325 A.2d 724 (1974); In Re Bossov, 60 Ill. 2d 439, 328 N.E.2d 309 (1975); Taylor v. State Bar of California, 11 Cal.3d 424, 521 P.2d 470, 113 Cal. Rptr. 478 (1974); Yokozeki v. State Bar of California, 11 Cal.3d 472, 521 P.2d 858, 113 Cal. Rptr. 602 (1974); In Re Durham, ___ Okla. ___, 312 P.2d 69 (1942); Florida Bar v. Wagner, 197 So.2d 823 (Fla. 1967); Nebraska State Bar Association v. Jensen, 171 Neb. 1 ,105 N.W.2d 459 (1960); Nebraska State Bar Association v. Bates, 162 Neb. 652, 77 N.W.2d 302 (1956); Oklahoma Bar Association v. Mason, 380 P.2d

961 (Okla. 1963); In Re Sarbone, 63 N.J. 94, 304 A.2d 734 (1973); Tennessee Bar Association v. Berke, 48 Tenn. App. 140, 344 S.W. 2d 567 (1961); West Virginia State Bar Association v. Pence, ___ W.Va. ___, 240, S.E.2d 668 (1978); In Re Wright, 131 Vt. 473, 310 A.2d 1 (1973).

The question then becomes what constitutes prejudice in the delay context. Generally the prejudice which must be shown is that resulting from the respondent's inability to present a defense to the charges. See, In re Wright, supra. Among factors which have been considered critical are the death or unavailability of witnesses, Taylor v. State Bar, supra; Tennessee Bar Association v. Berke, supra; the dimming of a witnesses' memory, In Re Sarbone, supra; Oklahoma Bar Association v. Mason, supra; and the loss of material evidence, West Virginia State Bar v. Pence, supra;

Columbus Bar Association v. Teaford, 6 Ohio St.2d 253, 217 N.E.2d 872 (1966). However, the burden is on the respondent to raise the issue at trial and to prove prejudice. See, In Re Wright, 310 A.2d at 9. General claims of prejudice are insufficient to support a finding of laches; respondents must show "specifically" how they have been disadvantaged. Caldwell v. State Bar, 13 Cal.3d 488, 119 Cal. Rptr. 217, 531 P.2d 785 (1975), In Re Bossov, supra; Yokozeki v. State Bar, supra; Lewis v. State Bar, 9 Cal.3d 704, 511 P.2d 1173, 108 Cal. Rptr. 821 (1973).

In the instant case it is interesting and significant to note that Mr. Goichman is not claiming that he was unable to present a defense to the charges lodged against him or that there was any undue delay before his hearing in 1974. He is alleging, and only in general terms, that the delay

between hearing and decision was prejudicial. Such an allegation is insufficient under the generally accepted rule. Indeed, this Court recently held that because its scope of review is de novo the respondent had suffered no prejudice from the delay of the Disciplinary Board in filing its Report. In re Green, 470 Pa. 164, 368 A.2d 245 (1977). Although the delay in Green was less than in the instant case the principle enunciated remains viable. Moreover, the question must arise of whether your Honorable Court finds only a delay in rendering an opinion a sufficient ground to overturn an otherwise appropriate decision.

In view of the foregoing we respectfully suggest that your Honorable Court affirm the decision of the Court of Common Pleas of Philadelphia County and impose upon respondent a suspension from the

practice of law of two years.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Allen B. Zerfoss

Chief Disciplinary Counsel

By: _____

Samuel D. Miller, III

Assistant Disciplinary Counsel

_____

John W. Herron

Assistant Disciplinary Counsel-in-Charge

cc: Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Louis L. Manderino
Honorable Justice Rolf Larsen
F. Emmett Fitzpatrick, Esquire
Allen B. Zerfoss, Chief Disciplinary Counsel

APPENDIX "D"

LAW OFFICES

3131 Centre Square West

Philadelphia PA 19102

215-568-2700

February 8, 1979

Honorable Michael J. Eagen

Chief Justice

Supreme Court of Pennsylvania

464 City Hall

Philadelphia, PA 19107

Re: In re William A. Goichman

No. 275 January Term 1978

Dear Chief Justice Eagen:

Kindly regard this letter as the last communication on behalf of Mr. Goichman. As I informed you on several previous occasions, Mr. Goichman is most anxious to have this matter disposed of by your Court and does not wish to delay it by engaging

in repetitive correspondence. However, the letter of January 30th addressed to your Court by disciplinary counsel comes as a surprise in light of the earlier position of the Disciplinary Board that they would not participate in this matter. This letter is meant only to respond to a few of the more salient points made by disciplinary counsel's letter.

The charges before your Court originated with a Special Judicial Investigation and a hearing against Mr. Goichman held in September of 1974 and completed in that same month. The decision of this Panel was not handed down until June 26, 1978 recommending that Mr. Goichman be suspended for two years, beginning in June of 1978. The charges range from filing a false contingent fee agreement naming the source of the case as a "friend" of the plaintiff, whereas it had really been an "unidentified

man", to the filing of false medical bills which indicated that various plaintiffs had been treated on dates on which treatment had not been rendered. Mr. Goichman quite seriously disputes his connection with any of these eventual conclusions and points to the fact that the hearing was completely devoid of any evidence which could have implicated him in any overall conspiracy. Contrary to the position of disciplinary counsel, he did not offer testimony before the Hearing Committee. His objection to their finding is based upon the fact that they did not have sufficient evidence to reach the conclusions that they did. I am certain that additional evidence could be mustered to dispute the conclusions of the Trial Panel. While Mr. Goichman does not intend to abandon this contention, his present request for relief is based upon more serious and more obvious grounds.

Disciplinary counsel makes much of the fact that Mr. Goichman has not shown any prejudice as a result of the obvious delay by the Trial Panel. He fails to recognize that the Supreme Court of Pennsylvania has been one of the leading appellant bodies in our nation in recognizing the fact that the prior requirements of showing specific prejudice are no longer applicable. Moreover, the bland assertion that no prejudice has been shown completely overlooks the fact that the two year suspension ordered by the Panel will not be over until six years after the Panel's conclusion of testimony solely as the result of the Panel's delay. During the intervening four years, Mr. Goichman was forced to live under the cloud of suspension or disbarrment and was completely without any recourse to hurry the Opinion of this Panel. The Supreme Court in the past has recognized that the evils of delay are

so great that they require complete discharge or reversal of conviction if, indeed, they are serious and unexplained. In the prior instance, the delay could not be more serious and the only justification pointed to for the delay is apparently an argument that the Mr. Goichman has failed to show specific prejudice.

Mr. Goichman respectfully requests the Court's immediate attention to this matter and prays for their Order overturning the suspension imposed by the Trial Panel.

Sincerely,

F. Emmett Fitzpatrick

FEF/bd

cc: As indicated on following page.

cc: Samuel D. Miller, III, Esquire
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Louis L. Manderino
Honorable Justice Rolf Larsen
Mr. William A. Goichman

APPENDIX "E"

THE DISCIPLINARY BOARD

OF THE

SUPREME COURT OF PENNSYLVANIA

DISTRICT I OFFICE

809 Widener Building

Philadelphia, Pennsylvania 19107

(215) 563-2650

February 13, 1979

Honorable Michael J. Eagen
Chief Justice
Supreme Court of Pennsylvania
464 City Hall
Philadelphia, PA 19107

RE: In re William A. Goichman
No. 275, January Term, 1978

Dear Chief Justice Eagen:

Having received a copy of Mr. Fitzpatrick's letter of February 8, 1979 we believe that our letter of January 30,

1979 deals adequately with the issues which Mr. Fitzpatrick's various letters raise.

As this office previously has noted, the delay to which Mr. Goichman objects was not a pretrial delay but a posttrial delay. Thus his ability to present a defense was not jeopardized. Also during the entire period to date Mr. Goichman has not been suspended as a result of the misconduct found by the Special Disciplinary Court in its opinion dated June 26, 1978. He has been free to practice in the Commonwealth except for the period of time he has been suspended for <u>other</u> misconduct. Moreover, perhaps the most important factor to be considered in analyzing the delay in Mr. Goichman's case is that the case was not a criminal case but a disciplinary case, in which there has been a finding that the attorney is unfit and that the public, the courts and the profession require protection

from Mr. Goichman. In this case delay is not the important factor; protection from an unfit attorney is.

Finally, if, as Mr. Fitzpatrick speculates, "additional evidence could be mustered to dispute the conclusions of the Trial Panel" that evidence should have been presented at trial. Moreover, we take that statement by Mr. Fitzpatrick to be an admission that there was, in fact, sufficient evidence to justify and support the findings of the Disciplinary Court.

Under the circumstances we respectfully reiterate our prior statement that the opinion of the Special Disciplinary Court be affirmed and that Mr. Goichman be suspended from the practice of law for two years.

Respectfully,

OFFICE OF DISCIPLINARY COUNSEL

Allen B. Zerfoss

Chief Disciplinary Counsel

By: _____
Samuel D. Miller, III
Assistant Disciplinary Counsel

_____
John W. Herron
Assistant Disciplinary Counsel-in-Charge.

cc: Honorable Justice Henry X. O'Brien
Honorable Justice Samuel J. Roberts
Honorable Justice Robert N.C. Nix, Jr.
Honorable Justice Louis L. Manderino
Honorable Justice Rolf Larsen
F. Emmett Fitzpatrick, Esquire
Allen B. Zerfoss, Chief Disciplinary Counsel